October 17, 2014

OREGON COASTAL NONPOINT PROGRAM
NOAA/EPA PROPOSED FINDING

A. URBAN AREAS MANAGEMENT MEASURES – NEW DEVELOPMENT

PURPOSE OF MANAGEMENT MEASURE: The purpose of this management measure is four-fold: (1) decrease the erosive potential of increased volumes and velocities of stormwater associated with development-induced changes in hydrology; (2) remove suspended solids and associated pollutants entrained in runoff that result from activities occurring during and after development; (3) retain hydrological conditions that closely resemble those of the pre-disturbance condition; and (4) preserve natural systems including in-stream habitat.

CONDITION FROM JANUARY 1998 FINDINGS: Within two years, Oregon will include in its program: (1) management measures in conformity with the 6217(g) guidance; and (2) enforceable policies and mechanisms to ensure implementation throughout the coastal nonpoint management area. (1998 Findings, Section IV.A).

PROPOSED FINDING: Oregon has satisfied this condition.

RATIONALE: In its March 20, 2014, submittal to NOAA and EPA, the State has committed to using its finalized TMDL implementation plan guidance for post-construction to voluntarily implement the new development management measure, to track this implementation with milestones, and to use Oregon DEQ's regulatory authorities to accomplish the objective of this measure in the event that the State's voluntary approach falls short of meeting the tracked milestones.

The performance standard required by the new development management measure is to reduce post-construction development total suspended solids (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than pre-development loadings, and to maintain post-construction development peak runoff rate and average volume at pre-development levels.

Communities/municipalities designated as Municipal Separate Stormwater Sewer Systems (MS4s) are excused from implementing the new development management measure, per the federal agencies' December 20, 2002, memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*, as they are regulated under the National Pollutant Discharge and Elimination System (NPDES) Phase I and II stormwater permit program. The federal agencies rely on the NPDES program to manage polluted runoff from new development in these areas. There are 11 communities/municipalities currently designated as MS4s within the coastal nonpoint management area, as follows: Ashland, Gold Hill, Grants Pass, Medford, Ranier, Rogue River, and the Rogue Valley Sewer Services (which includes Central Point, Eagle Point, Jacksonville, Phoenix and Talent, as well as portions of Jackson County in the Medford Urbanized Area).

Beyond regulated MS4 communities/municipalities, Oregon is relying on a TMDL implementation strategy to implement the new development management measures across its coastal nonpoint management area. In 2014, Oregon finalized and issued its *TMDL Implementation Guidance for Including Post-Construction Elements in TMDL Implementation Plans*, which focuses on the creation of local programs to control pollution loads from new development and to meet the specific objectives of the new development management measure. The guidance is primarily aimed at Designated Management Agencies, or DMAs (chiefly, local governments), that are subject to Water Quality Management Plans (WQMPs) associated with TMDLs where post-construction stormwater management has been identified as a load reduction strategy. DMAs are required to develop TMDL implementation plans to address post-construction runoff where WQMPs have identified this need. The guidance strongly encourages the use of a model stormwater ordinance (included as an appendix to the guidance) specifically designed to meet the new development management measure and other objectives.

Oregon DEQ is required under Oregon Administrative Rule (OAR) 340-042 (commonly referred to as the TMDL rule) to develop WQMPs for non-agricultural and non-forestry related land use sectors. These State-issued WQMPs provide the framework of management strategies for attaining and maintaining water quality standards. In Oregon's coastal nonpoint management area, the State has TMDLs in place, either for bacteria, sediment, nutrients or another pollutant, that cover nearly the full extent of its coastal nonpoint management area, and must therefore develop WQMPs for most urbanized and urbanizing areas that address these impairments.

Under Oregon's TMDL Rule, each urban or rural residential DMA identified as a source of stormwater or non-stormwater pollution (for example, excess heat causing unnaturally wide variations in receiving water temperature) must develop and implement a TMDL implementation plan to meet its assigned load allocation under the TMDL. Therefore, nearly all communities (DMAs) within the coastal nonpoint management area are assigned load allocation targets for bacteria, sediment, nutrients, or another pollutant. All community-specific TMDL implementation plans must be submitted to Oregon DEQ by the DMAs for review and approval. Under OAR 340-042-0080, any TMDL implementation plan must include: a timeline for implementing management strategies that will meet the required TMDL load allocation; a schedule for completing measurable milestones; and performance monitoring that demonstrates implementation of the strategies identified in the plan. The DMA must also provide reasonable assurances that the strategies described for addressing post-development runoff will be effective in meeting the TMDL load allocation.

Oregon DEQ asserts that bacteria and sediment impairments—and potentially nutrient impairments—are historically related to urban stormwater. There are 62 community/municipal DMAs spread across Oregon's coastal nonpoint management area, of which 49 (79 percent) are subject to either bacteria or sediment TMDLs or are regulated MS4 communities under the national Phase II stormwater program. These 49 communities/municipalities comprise approximately 92 percent of the combined population of the 62 communities. Five additional

communities in this management area are subject to a nutrient TMDL that may trigger the development of TMDL implementation plans to address post-construction runoff.

The State is tracking the implementation of this voluntary approach through a variety of means. Primarily through its TMDL Tracking Matrix, which DMAs are required to use, DEQ has a system in place to regularly track DMA assignments, TMDL implementation plan approval, TMDL plan implementation, and compliance. DEQ has established a target of five years to address and implement the CZARA New Development Management Measure across the coastal nonpoint management area, with the potential for an additional five years from the date of TMDL approval for any forthcoming urban TMDLs. This will allow time for DMAs to incorporate, develop, and implement appropriate management strategies.

To promote this guidance and encourage local implementation of the 6217(g) new development management measure, the State has committed to a schedule for training and educating DMAs and other stakeholders about the guidance. Oregon DEQ has developed an outreach strategy to promote the guidance (and the recommendations it contains) to the public, potentially affected communities and DMAs. Oregon DEQ developed outreach curricula in late 2014, and in early 2015 Oregon DEQ is scheduling a number of public informational meetings in different basins across the State's coastal nonpoint management area. These will be followed by one-on-one meetings with DMAs/permittees during TMDL/WQMP development and implementation (2015 through 2019).

In the event that Oregon's voluntary approach is shown to be inadequate for implementing the new development management measure within a reasonable time frame, DEQ has committed to taking formal regulatory action to accomplish that objective. DEQ has proposed an action horizon of five years from finalizing TMDL implementation plans and stated that this action could take one of three forms: (1) DEQ would develop and implement a post-construction general permit to meet the new development management measure and align with (or be combined with) Oregon's existing construction site runoff NPDES general permit (1200-C/CN), either through DEQ's permitting authority [ORS 468B.050] or by requesting that the State's Environmental Quality Commission adopt a rule requiring these permits [ORS 4608B.020]; (2) develop a rule for all DMAs to meet the new development management measure for adoption by the State's Environmental Quality Commission [ORS 468.020; 468B.020; and 468B.110]; or (3) designate local governments in the coastal nonpoint management area as regulated MS4 communities [federal - 40CFR 122.26 and state – ORS 468B.035].

~~August 18~~October 17, 2014

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~~Beyond the State's reliance on a voluntary approach, portions of Oregon's coastal nonpoint management area that are designated as MS4s are excused from implementing the new development management measure, per the federal agencies' December 20, 2002, memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*, as they are regulated under the National Pollutant Discharge and Elimination System (NPDES) Phase I and II stormwater permit program. The federal agencies rely on the NPDES program to manage polluted runoff from new development in these areas. The City of~~

~~Ashland, the City of Medford, and the Rogue Valley Sewer Services (which includes the cities of Central Point, Phoenix and Talent, and portions of Jackson County in the Medford Urbanized Area) are the only MS4s currently within the coastal nonpoint management area.~~